

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,689

IN THE MATTER OF:

Served November 19, 2008

SKY BLUE TOURS, INC., Suspension )  
and Investigation of Revocation of )  
Certificate No. 1179 )

Case No. MP-2008-162

This matter is before the Commission on respondent's failure to respond to Order No. 11,478, served July 18, 2008, which directed respondent to show cause why the Commission should not assess a civil forfeiture and/or revoke Certificate No. 1179 for respondent's knowing and willful violation of the seating capacity restriction in Certificate No. 1179.

**I. BACKGROUND**

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."<sup>1</sup> A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>2</sup>

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1179 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 1179 was rendered invalid on June 23, 2008, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 11,424 noted the automatic suspension of Certificate No. 1179 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 1179, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1179. Respondent submitted a \$5 million primary WMATC Insurance Endorsement on June 27 and paid the late fee on July 9.

Normally the Commission would have lifted the suspension at that point, but attached to the endorsement is a vehicle list from the insurance company with a single vehicle on it, a 27-passenger Dodge. Coverage for this vehicle is effective June 23, 2008, and respondent

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<sup>1</sup> Compact, tit. II, art. XI, § 6(a).

<sup>2</sup> Compact, tit. II, art. XI, § 7(g).

has confirmed that this is its only vehicle. Respondent, however, is not authorized to operate vehicles of this size. Certificate No. 1179 contains a seating capacity restriction that constrains respondent's operations to vehicles seating 15 persons or less, including the driver.

Order No. 11,478 accordingly gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 1179, for violating the seating capacity restriction in Certificate No. 1179.

Respondent has not responded, and respondent's WMATC Insurance Endorsement has been cancelled in the meantime, effective October 15, 2008.

## **II. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY**

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>3</sup>

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.<sup>4</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>5</sup> The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.<sup>6</sup>

As of October 31, 2008, respondent was still advertising tours in the Metropolitan District through its website<sup>7</sup> notwithstanding the continued suspension of Certificate No. 1179 since June 23, 2008. The advertised service includes tours from March through October in a trackless trolley that appears on its face to seat more than 15 persons, including the driver. It would appear this is the 27-passenger vehicle respondent admits is its only vehicle.

Regulation No. 63-04 provides that: "No carrier regulated by the Commission or subject to such regulation shall advertise or hold itself out . . . to perform transportation or transportation-related

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<sup>3</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>4</sup> Compact, tit. II, art. XI, § 10(c).

<sup>5</sup> In re Heaven on Wheels LLC, No. MP-07-238, Order No. 11,641 (Oct. 24, 2008).

<sup>6</sup> Id.

<sup>7</sup> www.skybluetours.us.

services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission."

Based on respondent's admission that the only vehicle in applicant's possession exceeds the seating capacity restriction in Certificate No. 1179, respondent's continued advertising of tours in the Metropolitan District on and after June 23, 2008, and respondent's failure to deny operating said vehicle as charged in Order No. 11,478,<sup>8</sup> we find that respondent knowingly and willfully held itself out to conduct tours, and conducted tours, in a vehicle exceeding the seating capacity restriction in Certificate No. 1179 from June 23, 2008 to October 31, 2008, while suspended. We will assess a forfeiture of \$250 per day for 131 days, or \$32,750.<sup>9</sup>

Considering the nature and persistence of the offense, respondent's failure to comply with Order No. 11,478, and respondent's current noncompliance with Regulation No. 58, we shall revoke Certificate No. 1179.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$32,750 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Certificate No. 1179, Regulation No. 63-04, and Order No. 11,478.

2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of thirty-two thousand seven hundred fifty dollars (\$32,750).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 1179 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Certificate No. 1179, Regulation Nos. 58 and 63-04, and Order No. 11,478.

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<sup>8</sup> See *In re K&G Limo. Serv., Inc., t/a Limousines For You, Inc.*, No. MP-98-17, Order No. 5343 (May 27, 1998) (failure to respond to show cause order adds weight to charges); *In re George Mouratidis, t/a Haymarket Transp. & Haymarket Transp., Inc.*, No. MP-98-15, Order No. 5341 (May 27, 1998) (same); *In re Regency Limo. Serv., Inc.*, No. MP-94-01, Order No. 4323 at 4 (June 21, 1994) (failure to respond to show cause order supports finding of knowing and willful violations); see also *In re ANA Hallo Tours (USA), Inc.*, No. AP-91-26, Order No. 3902 at 8 n.6 (Mar. 17, 1992) (failure to appear at hearing supports negative inference regarding state of mind); cf., Commission Rule No. 12-02 (allegations in complaint deemed admitted upon failure to defend or deny).

<sup>9</sup> See *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7005 (Jan. 21, 2003) (assessing \$250 per day against carrier that advertised and conducted unauthorized service); *In re Washington Exec. Sedan, Inc., & Global Express Limo. Serv., Inc.*, No. MP-02-03, Order No. 6772 (Aug. 13, 2002) (same).

4. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 1179 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director